IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 346 of 2001.

Date of decision: 9.7.2007.

New India Assurance Co. …….Appellant

Vs.

Pholo and Ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. K.D. Sood, Advocate.

For the Respondents : Mr. Pankaj Negi, Advocate vice Mr. N.K. Thakur, Advocate, for respondents No.1 and 2.

None for other respondents.

***Kuldip Singh, Judge* (Oral)**

1. This appeal is by insurer against the award dated 31.8.1999 passed by Motor Accident Claims Tribunal, Una in M.A.C. Petition No.50 of 1997, awarding Rs.72,000/- to claimants-petitioners along with 12% per annum interest, on account of death of Charu Das . The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that Charu Das was waiting for bus at village Ripoh Misra, tractor No.HIU-6653, which was being driven by respondent No.1 Ram Paul alias Sammi and owned by respondent No.2 Shadi Lal, ran over Charu Das who died on the spot. The

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

accident took place due to rash and negligent driving of respondent No.1. An FIR No.76/97 dated 6.5.1997 was registered at Police Station, Amb. The petitioners are the parents of the deceased, who was earning Rs.3,000/- per month. The deceased was 45 years of age at the time of accident. The petitioners were dependant on the deceased. The respondent No.3 is the insurer of the tractor. The petitioners claimed Rs.6,00,000/- compensation.

3. Nanak Chand was added as owner, respondent No.4, in the petition vide order dated 17.10.1998 of the Tribunal. The respondents No.1,2 and 4 filed joint reply and submitted that accident took place due to negligence of the deceased. It has been admitted that tractor No.HIU 4663 was owned by Nanak Chand respondent No.4 and was being driven by respondent No.1 at the time of accident. The respondent No.2 was engaged only to supervise the work. They denied their liability to pay any compensation to the petitioners.

4. The respondent No.3, insurer filed reply and took preliminary objections of maintainability, there is no privity of contract between Sadhi Lal owner of the tractor and insurer. A plea has been taken that even If Nanak Chand, the registered owner of the tractor has disposed of the vehicle to Sadhi Lal in that case also the Insurance Company is not liable to indemnify the claimant. The insurer has denied its liability to pay any compensation.

5. The Tribunal has held that Charu Das died in tractor accident which was being driven rashly and negligently by respondent No.1. The respondent No.4 Nanak Chand was the owner of the tractor at

the time of the accident and Ram Paul was possessing a valid and effective licence at the time of accident. The Tribunal has awarded Rs.72,000/- to the petitioners and made respondent No.3, insurer liable to pay award amount along with interest.

6. The insurer has filed the above appeal whereas owner and driver of the tractor have accepted the award and they have not filed appeal against the impugned award.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The learned counsel for the insurer has submitted that respondent No. 1 Ram Paul was not having valid and effective driving licence at the time of accident, he did not appear in the witness box to prove this fact. Hence, the insurance company is not liable to indemnify the owner. It has also been submitted that accident did not take place due to rash and negligent driving of the tractor and excess amount has been awarded to the claimants-petitioners.

9. The learned counsel for the claimants-petitioners has submitted that defence of negligence and quantum is not available to the Insurance company. On issue No.7 with respect to validity and effectiveness of the driving licence of Ram Paul driver of the tractor at the time of the accident, the insurer did not lead any evidence to discharge its onus. The Tribunal in absence of evidence of insurer has rightly decided issue No.7 regarding validity of licence of driver against the Insurance company.

10. The Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh and others (2004) 3 Supreme Court Cases 297 in para 110 (iii) (iv)*** has held as follows:-

> *"The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the other driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time".*
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> "*Insurance companies, however, with a view to avoid their liability must not only establish the available defences(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them."*

11. In the present case insurer has not led any evidence and has failed to prove that driver of the tractor at the time of accident was not having valid and effective driving licence. The insurer has not discharged its onus regarding the validity of licence. The Tribunal has rightly appreciated the material on record and held insurer to pay the compensation. The insurer has no right to raise grievance regarding negligence and quantum. The learned counsel for the appellant-

insurance company has failed to make out any case for interference. There is no merit in the appeal.

12. No other point was urged.

13. In view of above discussion, the appeal is dismissed. No costs.

(Kuldip Singh)
Judge.

July 9, 2007
(sks)